

HOUSE EDUCATION COMMITTEE SUBSTITUTE FOR
HOUSE BILL 450

47TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2006

AN ACT

RELATING TO SCHOOLS; REQUIRING LIABILITY COVERAGE FOR SCHOOLS
OPEN AFTER HOURS FOR COMMUNITY USE; MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 41-4-23 NMSA 1978 (being Laws 1977,
Chapter 386, Section 17, as amended) is amended to read:

"41-4-23. PUBLIC LIABILITY FUND CREATED--PURPOSES.--

A. There is created the "public liability fund".
The fund and any income from the fund shall be held in trust,
deposited in a segregated account and invested by the general
services department with the prior approval of the state board
of finance.

B. Money deposited in the public liability fund may
be expended by the risk management division of the general
services department:

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underscored material = new
[bracketed material] = delete

1 (1) to purchase tort liability insurance for
2 state agencies and their employees and for any local public
3 body participating in the public liability fund and its
4 employees;

5 (2) to contract with one or more consulting or
6 claims adjusting firms pursuant to the provisions of Section
7 41-4-24 NMSA 1978;

8 (3) to defend, save harmless and indemnify any
9 state agency or employee of a state agency or a local public
10 body or an employee of such local public body for any claim or
11 liability covered by a valid and current certificate of
12 coverage to the limits of such certificate of coverage;

13 (4) to pay claims and judgments covered by a
14 certificate of coverage;

15 (5) to contract with one or more attorneys or
16 law firms on a per-hour basis, or with the attorney general, to
17 defend tort liability claims against governmental entities and
18 public employees acting within the scope of their duties;

19 (6) to pay costs and expenses incurred in
20 carrying out the provisions of this section;

21 (7) to create a retention fund for any risk
22 covered by a certificate of coverage;

23 (8) to insure or provide certificates of
24 coverage to school bus contractors and their employees,
25 notwithstanding the provisions of Subsection F of Section

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1 41-4-3 NMSA 1978, for any comparable risk for which immunity
2 has been waived for public employees pursuant to Section 41-4-5
3 NMSA 1978, if the coverage is commercially unavailable; except
4 that coverage for exposure created by Sections 41-4-9, 41-4-10
5 and 41-4-12 NMSA 1978 and general liability coverage for after-
6 hours community use of facilities pursuant to Section 41-4-6
7 NMSA 1978 shall be provided to its member public school
8 districts and participating other educational entities of the
9 public school insurance authority, by the authority, and except
10 that coverage shall be provided to a contractor and [~~his~~] the
11 contractor's employees only through the public school insurance
12 authority or its successor, unless the district to which the
13 contractor provides services has been granted a waiver by the
14 authority or the authority is not offering the coverage for the
15 fiscal year for which the division offers its coverage.

16 General liability coverage for after-hours community use of
17 facilities shall not exceed one million dollars (\$1,000,000)
18 combined single limit per occurrence. A local school district
19 to which the division may provide coverage may provide for
20 marketing and servicing to be done by licensed insurance agents
21 who shall receive reasonable compensation for their services;
22 and

23 (9) to insure or provide certificates of
24 coverage for any ancillary coverage typically found in
25 commercially available liability policies provided to

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1 governmental entities, if the coverage is commercially
2 unavailable.

3 C. No settlement of any claim covered by the public
4 liability fund in excess of twenty-five thousand dollars
5 (\$25,000) shall be made unless the settlement has first been
6 approved in writing by the director of the risk management
7 division of the general services department. This subsection
8 shall not be construed to limit the authority of an insurance
9 carrier, covering any liability under the Tort Claims Act, to
10 compromise, adjust and settle claims against governmental
11 entities or their public employees.

12 D. Claims against the public liability fund shall
13 be made in accordance with rules or regulations of the director
14 of the risk management division of the general services
15 department. If the director of the risk management division
16 has reason to believe that the fund would be exhausted by
17 payment of all claims allowed during a particular state fiscal
18 year, pursuant to regulations of the risk management division,
19 the amounts paid to each claimant and other parties obtaining
20 judgments shall be prorated, with each party receiving an
21 amount equal to the percentage [~~his~~] the party's own payment
22 bears to the total of claims or judgments outstanding and
23 payable from the fund. Any amounts due and unpaid as a result
24 of such proration shall be paid in the following fiscal years."

25 Section 2. A new section of the Public School Code is

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1 enacted to read:

2 "[NEW MATERIAL] SELF-INSURED LIABILITY FOR CERTAIN PUBLIC
3 SCHOOL DISTRICT BUILDINGS USED AFTER HOURS BY COMMUNITY
4 GROUPS.--A public school district with a student enrollment in
5 excess of sixty thousand students shall provide liability
6 coverage for public schools open after hours for community use
7 of facilities pursuant to 41-4-6 NMSA 1978. General liability
8 coverage for after-hours community use of facilities shall not
9 exceed one million dollars (\$1,000,000) combined single limit
10 per occurrence."

11 Section 3. APPROPRIATION.--Two hundred sixty-six thousand
12 dollars (\$266,000) is appropriated from the general fund to the
13 public education department for expenditure in fiscal year 2007
14 for provision of public school insurance premiums necessary for
15 after-hours use of public schools. Any unexpended or
16 unencumbered balance remaining at the end of fiscal year 2007
17 shall revert to the general fund.

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